

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 2:16-cv-91
)	
DIAMOND RESIDENTIAL)	
MORTGAGE CORPORATION,)	
)	
Defendant.)	

OPINION & ORDER

The United States seeks to enforce federal tax liens against Edwin Stillman’s home in Valparaiso. (DE 1.) Diamond Residential Mortgage Corporation was named a codefendant because it “may claim . . . an interest in the real property on which the United States seeks to enforce its tax liens.” (DE 3 at 2.) The United States now seeks a default judgment against Diamond because the company hasn’t responded to the complaint or otherwise defended this lawsuit. (DE 19.) For the reasons below, the United States’ motion is granted.

Background

According to the complaint, Edward Stillman withheld more than \$175,000 in Federal Insurance Contributions Act (“FICA”) taxes from the wages of Provar Industrial Corporation employees between 2003 and 2005 but never paid it to the IRS. (DE 3 at 3.) Stillman also allegedly failed to pay federal income taxes totaling more than \$15,000 for 2012, 2013, and 2014. (*Id.* at 3-4.) The government recorded the FICA tax liability and

demanded payment from Stillman on March 15, 2016, and it assessed the unpaid income taxes and demanded payment from Stillman for 2012 and 2013 on October 19, 2015 and for 2014 on November 9, 2015. (*Id.* at 4.) Together with accrued penalties and interest and taking account of all payments, credits, and the like, Stillman allegedly owes \$288,181.79. (*Id.* at 4.)

Stillman and his wife, Monica, purchased real property at 230 East Bridgewater Lane in Valparaiso, Indiana on June 25, 2010. (*Id.* at 2.) The United States filed notices of federal tax liens on that property with the Porter County Recorder's office in Stillman's name for tax periods in 2003, 2004, and 2005 starting in August 2015, and it filed notices of those same liens in Diamond's name on December 9, 2015. (*Id.* at 5-6.)

The government filed this case three months later. (DE 1.) Although Diamond received service of the summons and amended complaint through its registered agent on May 2, 2016, the company failed to plead or otherwise defend this action by the May 23, 2016 deadline. (DE 12.) As a result, the Clerk of the Court entered a default on August 16, 2016 (DE 16), and the government has now moved for default judgment (DE 19). Diamond still has not appeared or responded.

Discussion

"[I]n civil cases, where a party fails to respond, after notice the court is ordinarily justified in entering a judgment against the defaulting party, and the court has considerable latitude in deciding whether to require plaintiff to produce evidence in support of the claims before entering such a judgment. *Bermudez v. Reid*, 733 F.2d 18, 21

(2d Cir. 1984) (citing Fed. R. Civ. P. 55(b)(2); 10 C. Wright, A. Miller, M. Kane, Federal Practice & Procedure §§ 2685, 2688 (1983)). However, even though Diamond has failed to challenge the facts alleged in the complaint, I still must determine whether those facts constitute a legitimate cause of action.

Count II of the complaint, the only count relevant to this defendant, alleges that the United States has federal tax liens against the Valparaiso property, arising from the FICA tax liabilities assessed against Stillman on March 15, 2006, and income tax liabilities assessed against him on October 19, 2015, and November 9, 2015. The count further alleges Diamond has no right, title, lien, or other interest in the Valparaiso property. Therefore, the complaint alleges a legitimate cause of action to determine the priority of the federal tax liens relative to any interest Diamond may have in the Valparaiso property.

Conclusion

Accordingly, the United States' Motion for Default Judgment (DE 19) is **GRANTED**, and it is hereby **ADJUDGED** that the federal tax liens that arose against Edwin L. Stillman's property on March 15, 2006, October 19, 2015, and November 9, 2015 are superior in priority to any right, title, claim, lien, or interest held by Diamond Residential Mortgage Company in the real property located at 239 East Bridgewater Lane, Valparaiso, Indiana. The Clerk of Court is **DIRECTED** to enter default judgment in favor of the plaintiff and against defendant Diamond Residential Mortgage Corporation and **ORDERED** to send a copy of this order to Diamond Residential

Mortgage Corporation, c/o InCorp Services, Registered Agent, 120 E. Market St., Ste.
808, Indianapolis, IN 46204.

SO ORDERED.

ENTERED: December 29, 2016.

s/ Philip P. Simon
CHIEF JUDGE
UNITED STATES DISTRICT COURT